Filed 3/7/11 Valley Health System v. Superior Court CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

VALLEY HEALTH SYSTEM et al., Petitioners, v. THE SUPERIOR COURT OF RIVERSIDE COUNTY, Respondent; ALEXANDRA AMY ARMENDARIZ et al., Real Parties in Interest.	E052331 (Super.Ct.No. RIC488012) OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. Bernard Schwartz, Judge. Petition granted.

Kramer, deBoer, Endelicato & Keane, Deborah Olsen deBoer, Kathleen A. Stosuy, Karla M. Meier, and Erik S. Laakkonen, for Petitioners.

No appearance for Respondent.

Law Offices of Shawna S. Nazari and Shawna S. Nazari for Real Parties in Interest.

In this matter we have reviewed the petition and the opposition thereto, which we conclude adequately address the issues raised by the petition. We have determined that resolution of the matter involves the application of settled principles of law, and that issuance of a peremptory writ in the first instance is therefore appropriate. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.) We conclude that the trial court erred in denying petitioners' summary judgment motions when the declaration of real parties in interest's (real parties) expert offered in opposition to that motion did not satisfy the requirements of Health and Safety Code section 1799.110, subdivision (c).[1]

BACKGROUND

This petition arises from a medical malpractice action. Real parties are suing petitioners for wrongful death and negligent hiring and retention predicated on the theory that their decedent was negligently treated by Dr. Todd C. Hanna in the emergency room of Hemet Valley Medical Center. Both petitioners filed separate motions for summary judgment based upon the declaration of Dr. Michael H. Forman stating that Dr. Hanna's treatment was within the standard of care for emergency room physicians.

In opposing the motion, real parties submitted the declaration of Dr. Payam Farjoodi. Dr. Farjoodi declared that he is familiar with the standard of care for a physician in an emergency room. However, the curriculum vitae (CV) he attached

[1] Statutory references are to the Health and Safety Code.

indicates he is a specialist in orthopedics and that he graduated from Johns Hopkins in 2005, having done a clinical rotation in emergency medicine in 2004. After graduating, Dr. Farjoodi did a one-year internship at Johns Hopkins in Orthopedic surgery, followed by a three-year residency. Since August 2010, he has been at University of California, San Diego, in the Department of Orthopedic Surgery.

Petitioners objected that Dr. Farjoodi's declaration was not admissible because he made no showing he had substantial experience in emergency medical care as required by section 1799.110. The trial court agreed that Dr. Farjoodi did not show sufficient qualifications. Real parties asked for a continuance to obtain another expert; instead, the trial court granted them 30 days for Dr. Farjoodi to file a supplemental declaration regarding his emergency room qualifications.

In his supplemental declaration, Dr. Farjoodi stated he provided care in the emergency departments at Johns Hopkins and Bayview hospitals. He stated that Johns Hopkins had opened up an Emergency-Acute Care Unit in 2001, which was very innovative. In 2005-2006 he declared he worked 80 hours a week in the emergency room at Johns Hopkins providing acute care to patients in the emergency department. This equated to over 2,000 hours spent providing acute care to patients, including gravely ill patients in the ICU and emergency department.

The trial court found that the declaration of Dr. Farjoodi demonstrated he had substantial emergency room experience based on the statement that he worked 80 hours a week in the emergency room in 2005 and 2006 providing acute care to patients. It acknowledged that there were some lingering questions about his experience, so it denied

the summary judgment without prejudice. It noted that if petitioners deposed Dr. Farjoodi and discovered information showing that his experience really did not comply with section 1799.110, then petitioners could refile the summary judgment motions.

DISCUSSION

Section 1799.110, subdivision (c), requires that in a medical malpractice action against a physician providing emergency medical coverage, an expert testifying as to the standard of care must be one who has "substantial professional experience" in providing emergency medical services in an emergency room. (See also *Miranda v. National Emergency Services, Inc.* (1995) 35 Cal.App.4th 894, 900 (*Miranda*); *Zavala v. Board of Trustees* (1993) 16 Cal.App.4th 1755, 1762-1763.)

Section 1799.110, subdivision (c), further provides that " 'substantial professional experience' shall be determined by the custom and practice of the manner in which emergency medical coverage is provided in general acute care hospital emergency departments in the same or similar localities where the alleged negligence occur[r]ed."

In *Miranda*, *supra*, 35 Cal.App.4th 894, 902, the court concluded that the phrase "emergency medical coverage" referred to physicians who work as the on duty professional staff of an emergency room rather than specialists who provide services in an emergency room only on an "as needed, as called" basis. Thus, an orthopedic specialist "on call" to the emergency room to consult on and treat orthopedic injuries did not qualify as an expert under section 1799.110, subdivision (c). As *Miranda* points out, the standard of care in such cases should be based on the doctors who are on the front line

seeing patients in the emergency room—not a specialist who may see a patient after an initial assessment has been made.

Petitioners raised questions about Dr. Farjoodi's emergency room experience. How many hours of the 80 hours a week were actually spent providing emergency coverage as opposed to tending to patients in the ICU section of this innovative unit? Was he even a licensed physician at the time he did this work? Petitioners may have a valid point that all doctors serve a rotation in emergency rooms and this should not qualify them as emergency room experts. In addition, it is questionable whether one year experience should be considered "substantial." However, we conclude that the trial court did not abuse its discretion in finding that the 2,000 hours Dr. Farjoodi declared he had spent in the emergency room environment satisfied the "substantial emergency room experience."

Nevertheless, Dr. Farjoodi's experience does not meet the other requirement that his experience be in the same or similar locality. The statute places the burden on the party submitting the expert's declaration to establish his requisite experience in the same or similar locality. Real parties did not do this. Dr. Farjoodi's declaration and CV indicate his experience was at Johns Hopkins in Baltimore, Maryland, which is on the east coast and, no matter how liberally we construe this requirement, we cannot find that that is a similar location to Hemet, California.[2]

[2] Dr. Farjoodi did not indicate where Bayview Hospital is located, but, presumably, it is on the east coast since he worked at both locations during 2006.

DISPOSITION

Let a peremptory writ of mandate issue directing the Superior Court of Riverside County to set aside its order denying petitioners' summary judgment and to enter a new order granting the motions.

Petitioner is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

Petitioners to recover costs.

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MILLER
Acting P. J.

We concur:

HOLLENHORST
J.

KING
J.